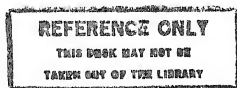


POLICE DISCIPLINE PROCEDURES - CONSULTATION PAPER
NORTHERN IRELAND OFFICE

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POLICE DISCIPLINE PROCEDURES - CONSULTATION PAPER

EXECUTIVE SUMMARY

1. This consultation document is intended to provide an opportunity to comment on the Secretary of State's proposals for changing police conduct and performance procedures in the RUC.
2. Section 1 introduces the paper.
3. Section 2 outlines the scope of the paper: it applies to chief superintendent rank and below.
4. Section 3 explains the background to the present position.
5. Section 4 proposes new procedures for dealing with unsatisfactory performance. These fall into informal and formal action, the latter involving a 4 stage process of first interview, second interview, hearing and review. The hearing would be convened by an officer of chief officer rank (but not the Chief Constable), supported by 2 assessors of at least superintendent rank. The review would be conducted by the Chief Constable. There would be a right of appeal on dismissal. Views are sought on the following specific questions:

Q1 Do the proposed procedures for dealing with poor performance meet the requirement for greater management flexibility?

Q2 Are the proposed procedures fair to the officer concerned?

Q3 Is an Appeals Tribunal set up to deal solely with the police, the appropriate avenue of appeal against dismissal? Who should sit on the Tribunal?

6. Section 5 concludes that there is a need for a structured approach to police misconduct. It incorporates a possible description of misconduct. General comments will be welcome, but views are sought on the following specific questions:

- Q4 Is either of the possible approaches set out in paragraphs 5.3 and 5.4 satisfactory to describe the areas in which the public interest requires failure of police performance to be treated as misconduct? Is there some other means of identifying them that would be preferable?
- Q5 Would it be useful to provide an illustration of the sort of conduct which would be comprehended under the terms of paragraphs 5.3 or 5.4?

7. Section 6 describes the existing procedures for dealing with complaints against the police. It proposes that the ICPC should continue to have oversight over the entire complaints system.

- Q6 Is there any reason why external oversight by the ICPC should not continue for all complaints against police officers by members of the public?

8. Section 7 proposes that police managers should be able to take management action in advance of a decision by the DPP or a court and that refusal by a police officer suspected of misconduct to give management an explanation of his or her actions once the DPP has finished with the case, should cast doubt on the officer's conduct and fitness for the service.

- Q7 Is it right in principle that management should be free to take appropriate action in respect of an officer who may have failed to meet police standards notwithstanding that he or she has been acquitted of a criminal offence?
- Q8 Should the possibility (or fact) of criminal proceedings be an automatic bar to misconduct hearings until a decision has been taken not to prosecute or criminal proceedings have been concluded?

Q9 Are there any reasons why a police officer should not be expected to account for his or her actions when suspected of misconduct?

10. Section 8 sets out proposals for replacing the current arrangements for dealing with police discipline matters with modernised misconduct procedures. It covers the role of the RUC complaints department in investigating an allegation against an officer; the likely outcomes following consideration of the investigating officer's report; and the arrangements for a misconduct hearing if it is decided to proceed with one. As in the unsatisfactory performance procedures, it is proposed that a hearing would be held by a chief officer (but not the Chief Constable), assisted by 2 assessors of at least superintendent rank. The outcomes of the hearing could range from dismissal to a warning. It is suggested that monetary penalties should be included as a possible outcome following a hearing. It would be open to an officer to appeal to the Chief Constable against the finding of a hearing and if still not satisfied, and where the punishment has been dismissal or requirement to resign, to a further appellate body.

Q10 Are there any reasons why the RUC's complaints department cannot undertake the role assigned to it in paragraphs 8.4 and 8.5?

Q11 Is there any reason why a misconduct hearing should be on a quasi-judicial model?

Q12 Is the approach to the level of evidence suggested in paragraph 8.15 appropriate for misconduct hearings?

Q13 Do the proposed procedures for misconduct hearings meet the requirement for more efficient management?

Q14 Are the proposed procedures fair to the officer concerned?

- Q15 Are there any other comments on the procedures broadly described, or any suggestions for a different type of procedure?
- Q16 Who should hear a misconduct case if the ICPC and police management disagree on the need for a hearing? Who should oversee the presentation of the case?
- Q17 Is the range of outcomes suggested appropriate?
- Q18 Is there any reason why the Secretary of State should be involved in any way in police disciplinary proceedings?
- Q19 Is it acceptable and reasonable for the Chief Constable to have a power of outright dismissal as suggested?
- Q20 To what extent should the description of misconduct (paragraphs 5.3 and 5.4), and the new procedures for handling unsatisfactory performance and misconduct be embodied in secondary legislation?

August 1993

Northern Ireland Office
Police Division

POLICE DISCIPLINE PROCEDURES - CONSULTATION PAPER

1. INTRODUCTION

On 30 March 1993, the Home Secretary published a consultation document for England and Wales containing proposals for changes to police discipline procedures. The Secretary of State for Northern Ireland considers that there is merit in considering parallel proposals, in relation to the RUC, which recognise and reflect the particular circumstances of Northern Ireland. This consultation paper accordingly invites views on proposed changes to police discipline procedures in Northern Ireland.

1.2 The paper makes proposals to change the framework within which police officers are managed. It addresses the dual issues of how officers should be dealt with who are either not performing satisfactorily or whose behaviour is unacceptable.

1.3 Comments are invited on whether these proposals would have merit for application in Northern Ireland and on the specific questions which are raised in the course of the paper. Consultees who wish to have their views taken into account in the analysis which will follow the consultation exercise should forward their responses as soon as possible and not later than 31 October 1993.

1.4 All responses should be addressed to:

Police Discipline Consultation
Police Division
Northern Ireland Office
Stormont
Belfast BT4 3ST

2. SCOPE OF THE PAPER

2.1 This paper makes no proposals in relation to the management of the police support staff because they are employed by the Police Authority rather than directly by the Police Service.

2.2 Similarly, no reference is made to financial incentives or promotion prospects as ways of encouraging and enabling officers to give of their best. Recommendations on these issues were published on 30 June in the Report of the Inquiry into Police Responsibilities and Rewards, under the chairmanship of Sir Patrick Sheehy. The Secretary of State takes the view that it would be helpful to have a wide range of views on the fundamental disciplinary issues addressed here at the same time as the Sheehy recommendations are being considered.

2.3 This document is concerned with officers of chief superintendent level and below, including members of the Full-Time and Part-Time Reserve. The discipline arrangements for officers of chief officer rank, ie assistant chief constables, deputy chief constables and the Chief Constable, differ from those in the ranks below, primarily because the Police Authority has a role to play both in their appointment and, where appropriate, in disciplinary matters. Their position will be considered later in the light both of the responses to this paper and of the recommendations made by the Sheehy Inquiry.

3. POLICE DISCIPLINE PROCEDURES

3.1 At present the only formal provision for dealing with any failure to come up to police standards lies in the disciplinary regulations contained in secondary legislation made under powers contained in the Police Act (Northern Ireland) 1970. These equate with similar disciplinary regulations in England and Wales made under the Police Act 1964 and the Police and Criminal Evidence Act 1984. The Secretary of State considers that the existing police disciplinary regime is not the most effective or appropriate way to deal with failure to come up to appropriate police standards.

3.2 The current discipline process is inflexible and does not provide a satisfactory way of dealing with honest mistakes, lapses of memory, low standards, minor but unacceptable corner-cutting, and poor performance caused by problems at home or with health. In addition, there are many cases where an officer has been guilty of some minor misconduct which, while not of the most serious nature, ought to be a matter for some censure. The mounting of a formal hearing is generally regarded as disproportionate to the seriousness of such an offence and it is not uncommon for the matter to be dealt with informally as a result. This means that the current disciplinary system is ineffective in dealing with the lower range of circumstances in which it might be necessary to question an officer's conduct.

3.3 The Home Secretary has proposed a new model for dealing with failures in police standards in England and Wales, based on modern methods of personnel management. This paper sets out how this could be applied in Northern Ireland and invites comments on the procedures proposed. Separate but similar procedures are proposed for dealing with unsatisfactory performance and for misconduct.

4. PROCEDURES FOR DEALING WITH UNSATISFACTORY PERFORMANCE

Informal Action

4.1 One important job of management is to help and encourage all officers to meet and, where possible, exceed basic standards of performance. Management must also be able to deal with the relatively small number of officers who consistently fail to meet minimum standards. Welfare, training needs and the possibility of a change of duties must all be considered, together with the facility for medical advice where performance may be affected by a medical condition. The need for improvement must be pointed out, and officers warned that their performance is being monitored and that formal procedures will have to be instituted if it does not improve. Accurate record-keeping at each stage of the process is, of course, essential to ensure that procedures are fair. This may be particularly necessary where frequent minor failures to achieve acceptable standards cumulatively amount to a pattern of under-performance, or where the work of an under-performing officer suddenly improves when under scrutiny.

4.2 The key points for police managers are that there must be a reasonable and sustained managerial response to any problem of poor performance, and that the first objective of any action taken - whether formal or informal - must be to secure the necessary improvement in work performance. The object is to help the officer to meet the demands of the job. But if all efforts fail to achieve an adequate or sustained improvement, formal procedures to deal with the unsatisfactory performance will have to be set in train.

Formal Procedures

4.3 The proposed formal procedures involve a 4 stage process which largely reflects the procedures which apply to most other public servants. At each of the first 2 stages progress to the next stage would be avoided if the officer proved able to bring his or her standard of work up to what is required. (These procedures do not apply to probationary officers who fail to meet the required

standard of performance. Separate arrangements exist to cover such officers, which include provision for the Chief Constable to terminate the officer's service if necessary.)

4.4 These procedures are intended to come into effect only if informal guidance and counselling has failed to effect any improvement.

- (a) First interview This would be conducted by the officer's immediate supervisor, and a written record would be made of the interview describing the area in which performance is required to improve and the agreed period within which that improvement must have been maintained or by the end of which it must have been reached.
- (b) Second interview If performance again falls below the required standard during the given period or if, after the time set at the first interview, the officer's performance has not improved sufficiently, the police personnel department would be consulted and would be represented at a second interview. The second interview would be conducted by the head of division or local commander. The result might be a written warning that improvement is required in a specific area, and that failure to improve could lead to dismissal or to demotion (if relevant to the officer's position and the particular failure involved). Again, the officer would be made aware of the relevant timescale.
- (c) Unsatisfactory performance hearing If there is still no improvement, there would be a hearing chaired by an officer of chief officer rank (but not the Chief Constable), preferably with responsibility for personnel, and 2 assessors of at least superintendent rank. The officer would receive in advance a written statement of the matters complained of, explaining the reasons for the hearing. If the hearing regards the

officer's performance as satisfactory, no further action would be taken. If not, and the hearing decides that further action can be taken by management to help improve performance, this action would be specified and recommended. Where an officer's performance is unsatisfactory and the hearing considers nothing further could be done by management, the officer can be dismissed or transferred with reduced rank and, if necessary, with a written warning that failure to improve over a given period could still lead to dismissal. Any decision that the officer should leave the Force would take effect after 30 days, but the officer could be suspended from duty with pay with immediate effect.

- (d) Review The officer would have a right to seek a review by the Chief Constable of any decision made at an unsatisfactory performance hearing. Such a review would have to be sought quickly (eg within one week) and would be determined within the 30 days' notice period. The review would base its consideration on the case papers, coupled with written representations from the officer seeking the review. Written reasons for the review's decision would be given within 3 working days of the Chief Constable's consideration of the papers.

4.5 It would be open to the officer concerned to be accompanied by a friend at any relevant stage of the procedure described above. That friend could be another police officer, a personal friend or a relative. The role of the friend would be to support the officer concerned but not to represent him. Additionally, when attending an unsatisfactory performance hearing - the outcome of which may result in demotion or dismissal - it would be open to the officer to have an adviser present to provide assistance, including one who is legally qualified. Such an adviser would not take an active part in the proceedings, for example by presenting evidence, cross-examining or making submissions. He or she would, however, be able to offer the officer concerned advice and support.



4.6 The avenue of any appeal against dismissal would be to a specially constituted Appeals Tribunal.

4.7 It would be for the Chief Constable to decide whether and how to defend any appeal before this Tribunal. Any finding as to reinstatement would be binding. The establishment of such a Tribunal would have resource implications.

4.8 These procedures for dealing with poor performance, after all reasonable support has been given to an officer to help him or her improve, would enable the great majority of day-to-day problems which may arise in a management context to be satisfactorily resolved. In particular, they would enable officers with supervisory or management responsibilities to deal quickly and effectively with poor performance at an operational level. Views are invited on the following questions:

- Q1 Do the proposed procedures for dealing with poor performance meet the requirement for greater management flexibility?
- Q2 Are the proposed procedures fair to the officer concerned?
- Q3 Is an Appeals Tribunal set up to deal solely with the police the appropriate avenue of appeal against dismissal? Who should sit on the Tribunal?

5. MISCONDUCT

5.1 The Secretary of State considers that the public interest in a well managed police service means that it is necessary to identify behaviour that will constitute police misconduct.

The Discipline Code

5.2 In the past the problem has been resolved by setting out a detailed list of improper actions in the Police Discipline Code. This, however, has been shown to have flaws. First, the rigidity of the Code sometimes makes it difficult to fit a particular instance of bad conduct into the various tightly defined elements of the Code. Secondly, the practices built up around the Code have resulted in an excessively legalistic approach, creating inflexibility in dealing with particular instances of misconduct.

Alternatives to a Formal Code

5.3 Accordingly it may be better to approach this matter by stipulating that it will be appropriate to implement misconduct procedures when there is an allegation or evidence, for example, that a police officer:

- (a) has abused one of his powers in relation to a member of the public (or wilfully omitted to observe a safeguard);
- (b) is or has been involved in any other action, including criminal action or action constituting a civil wrong, which casts doubt on his fitness to be a police officer; or
- (c) fails fully to account to his seniors for his actions while on duty when called on to do so.

5.4 A second, but narrower, formulation would stipulate that the matter should be treated as potentially one of misconduct when there is an allegation or evidence that the officer has:

- (a) committed a crime;
- (b) breached the Codes of Practice under the PACE (Northern Ireland) Order or any Codes under the Northern Ireland (Emergency Provisions) Act; or
- (c) failed to account for his actions on duty in relation to such an allegation.

5.5 It may be helpful in addition for practical examples to be provided of behaviour that would attract these procedures. Depending on the description of misconduct adopted, the existing Discipline Code could serve as an illustration of the kind of behaviour covered, provided it was not seen as a comprehensive definition and that it were accepted that misconduct may not always fit exactly into the areas currently exemplified.

Q4 Is either of the possible approaches set out in paragraphs 5.3 and 5.4 satisfactory to describe the areas in which the public interest requires failure of police performance to be treated as misconduct? Is there some other means of identifying them that would be preferable?

Q5 Would it be useful to provide an illustration of the sort of conduct which would be comprehended under the terms of paragraphs 5.3 or 5.4?

6. INDEPENDENT OVERSIGHT OF POLICE COMPLAINT PROCEDURES

6.1 Whatever description is adopted for police misconduct, and whatever procedures are followed, there needs to be independent oversight of police misconduct procedures, in order to safeguard both the interests of police officers and those of the public. Current arrangements provide for such oversight:

- (a) whenever a complaint is made by a member of the public. These cases are reviewed by the Independent Commission for Police Complaints (ICPC).
- (b) whenever an allegation of criminal behaviour is made against a police officer. These cases are reviewed by the Director of Public Prosecutions (DPP).

Many cases are reviewed by both bodies.

6.2 The current legislation provides for oversight by the ICPC of the informal resolution procedure for dealing with less serious complaints. The ICPC is directly involved in supervising the investigation of more serious complaints and in decisions on whether police officers should be charged with offences against police discipline. The Government believes that there are strong arguments that the ICPC should continue to exercise these functions. Review by the DPP of any case where a police officer is accused of a crime will naturally continue as at present.

- Q6 Is there any reason why external oversight by the ICPC should not continue for all complaints against police officers by members of the public?

7. RELEVANCE OF CRIMINAL PROCEDURES TO MISCONDUCT

7.1 Before examining misconduct procedures in detail it is necessary to examine the complications which arise from criminal allegations against police officers. Special considerations necessarily apply to what are potentially criminal cases, and this section of this paper examines their impact on any associated police misconduct procedures.

Complaints Against the Police

7.2 The first indication that a police officer may have acted outside the law often comes from a complaint from a member of the public. Under the present arrangements for dealing with complaints against the police, those complaints which contain no allegation of criminality are investigated on the instruction of the Deputy Chief Constable. In all but minor infringements of the Code the Deputy Chief Constable will appoint an investigating officer with no prior connection with the case to look into the matter and report to him. The investigation may be supervised by the ICPC. Where there is a suggestion of possible criminality, a report is sent to the Director of Public Prosecutions.

"Double Jeopardy"

7.3 The move to a management approach to misconduct procedures raises important questions about the action which might be proper if an officer charged with a criminal offence is acquitted. A reasonable employer might nevertheless conclude - in individual cases - that the person concerned had not met the standards required for the job. Police managers at present do not have this option. Because the procedures associated with the Discipline Code are so like criminal proceedings, the view has been taken that to take disciplinary proceedings when the outcome of related criminal proceedings is an acquittal would be to place the officer concerned in "double jeopardy". An officer therefore cannot be charged with a disciplinary offence which is in substance the same as a criminal charge.

7.4 The Government believes that this position is untenable when the focus is changed from quasi-judicial disciplinary procedures to proper management action in relation to staff. Notwithstanding that particular behaviour by an officer is found not to be a crime, it may still constitute unacceptable behaviour for a police officer. For example, a police officer who removes property from premises and fails to record having done so, may or may not be committing theft and may or may not be charged and found guilty - but he or she has clearly failed both to obey Force Orders and to fulfil his or her duty of care for the property of members of the public.

7.5 The implication of this is that whereas the DPP must reach a decision on the need to prosecute or the courts must examine whether an officer is guilty as charged, police managers have an interest in the matter which is quite different in character. The Secretary of State considers that there should in any event be available to police managers, management decisions ranging from taking no action (because the officer is considered entirely free from fault), to the imposition of further training or some form of warning, or the institution of proceedings for unsatisfactory performance or misconduct, depending on the nature of the case.

7.6 Views are sought on the following questions:

- Q7. Is it right in principle that management should be free to take appropriate action in respect of an officer who may have failed to meet police standards notwithstanding that he or she has been acquitted of a criminal offence?
- Q8. Should the possibility (or fact) of criminal proceedings be an automatic bar to misconduct hearings until a decision has been taken not to prosecute or criminal proceedings have been concluded?

Self Incrimination

7.7 As the criminal law now stands, a person accused of a criminal act is not required to respond to the accusation. Police officers who are accused of criminal offences have the same rights in law as any other citizen and will continue to do so.

7.8 Once criminal proceedings have been completed, however, or the DPP has decided not to prosecute, an officer's position changes. There is no legal reason why the officer concerned should not provide his supervisors with a full account of his or her behaviour on the occasion in question. Since it is an officer's duty to report accurately and fully on any incident when asked to do so it is proposed that in future refusal to do so should be taken to cast doubt on the officer's conduct and fitness for the service. How seriously that failure to co-operate will be regarded will relate to the seriousness of the matter under discussion, but the Secretary of State's present view is that it should always be regarded as a serious matter with dismissal as a possible outcome.

7.9 The argument against this approach is that if an officer is required to give a full account of his or her actions in a situation where a criminal act has been suspected, such an account may serve to incriminate the officer. If there has been an acquittal the officer cannot be tried for the same offence, but there must at least be a possibility of further prosecution action if, where the account is self-incriminating, the DPP has previously decided not to prosecute or a case has been stopped for lack of evidence or on technical grounds. The question here is whether, because of this possibility, the officer should be able to shelter behind the argument of self-incrimination to justify not giving a full explanation of his or her conduct to supervisors.

7.10 This justification is not available to other public servants. Indeed, in most walks of life it would be unusual for an employee to be able to refuse to give an explanation to the line manager in response to a serious allegation about his or her work without any risk of any adverse inference being drawn. If an officer declines to

provide a full explanation it must be reasonable to allow his supervisors to conclude that such a silence has adverse implications for that officer's standard of service, and to respond accordingly. Consultees are therefore invited to indicate:

- Q9. Are there any reasons why a police officer should not be expected to account for his or her actions when suspected of misconduct?

8. PROCEDURES IN MISCONDUCT CASES

8.1 The procedures currently followed in police discipline cases are explained at Appendix A to this paper. The quasi-judicial nature of the proceedings is emphasised by the requirement for a formal charge and the option of legal representation in cases which might involve dismissal or demotion.

8.2 The next section of this paper explores the ways in which misconduct cases, of the type which is discussed in paragraphs 5.3, 5.4 and 5.5, might be handled. This paper does not seek to define hard and fast rules for the future, but to indicate the general spirit of its proposals and seek comment on them.

Starting the Process

8.3 Section 4 of this paper, which deals with poor performance, has made it clear that an officer's immediate supervisors must be responsible for identifying such performance and taking action to improve it. In cases of suspected or alleged misconduct, however, it would seem more appropriate for these to be dealt with by the police department presently responsible for complaints and discipline (referred to in the following text as the "complaints department"). This is because, while the number of cases of potential misconduct will be relatively limited, the possible consequences will be very serious, and there will be a need for recognition of possible links with criminal proceedings in which the officer may be or may have been engaged.

8.4 A misconduct case would therefore start with information reaching the complaints department that a certain officer is alleged, or suspected, to have behaved in a manner which falls within an established description of misconduct. Where the misconduct would, if proved, constitute a criminal offence, the allegation would be recorded by the complaints department and the information passed to whoever is made responsible for investigating the allegation.

8.5 In all cases, the officer responsible for taking the case forward must try to discover what actually happened on the occasion in question. (In criminal cases this stage may not be able to be reached until the point when an allegation involving a criminal offence has been through the DPP and, where relevant, the courts). Once the circumstances of an incident have been fully investigated the management decisions necessary may best be taken by those trained and engaged in personnel matters.

Q10. Are there any reasons why the RUC's complaints department cannot undertake the role assigned to it in paragraphs 8.4 and 8.5?

Enquiries

8.6 The investigating officer's first task would be to examine the information already available, which may range from an expression of misgiving to a full criminal file, possibly with a court report, and decide its relevance to misconduct issues and the extent to which there are gaps or inconsistencies, or any obvious way in which the truth can be tested. On the basis of this assessment of the situation, the investigating officer would then write a brief summary of the apparent misconduct and give it to the officer concerned, with an invitation to provide an account of what happened and to suggest any ways in which the investigating officer might test further the truth of what has been alleged. This would be an informal exchange designed to clear the ground before the possibility of formal misconduct proceedings is considered.

8.7 When the investigating officer has obtained all the information considered necessary for a decision on misconduct proceedings, a factual statement would be prepared giving an account of all the relevant information, including such verification of the account as had been obtained. The statement would be made available to the officer concerned for correction, within a given period, of any errors in the account, for comment on other people's accounts, and for further suggestions for verification if appropriate. A copy of the final statement would then be sent simultaneously to the officer

concerned and to the senior officer who is responsible for deciding whether misconduct proceedings would be appropriate. This would usually be the chief superintendent or superintendent in charge of the complaints department.

The Decision to Hold a Misconduct Hearing

8.8 The outcome of the senior officer's consideration could be any of the following conclusions:

- (a) The officer appears to have acted reasonably in the circumstances described and there is no need for action.
- (b) The action in question does not fall within an established description of misconduct but reveals some shortcoming which might require management action or fall within the parameters of unsatisfactory performance. The shortcoming would be drawn to the attention of the officer concerned and his or her immediate supervisor for discussion and appropriate action. This discussion might be conducted and recorded along the lines of the "first interview" described in paragraph 4.4(a) of the unsatisfactory performance procedures in Section 4.
- (c) It is impossible to tell what the truth of the matter is. Cases of this type are inevitably fairly common when many police-public confrontations take place without a third party present. The material should form part of the officer's personal record. An unusually large number of incidents of this sort might indicate that something is amiss in the way the officer approaches the public, which might ultimately result in action on unsatisfactory performance grounds, even though no misconduct action would be appropriate in respect of any individual incident.

- (d) The officer appears to have behaved in an unacceptable way which falls within the description of misconduct. He or she should be required to appear at a misconduct hearing so that appropriate action may be decided.

The Hearing

8.9 A misconduct hearing would have similarities with the hearing described in paragraph 4.4(c) relating to allegations of unsatisfactory performance, with some significant differences. In misconduct cases there will quite often be conflicting factual accounts. The conflict would have to be resolved by the officer charged with deciding the case before the question of the future of the officer subject to the hearing would arise.

8.10 The Secretary of State wishes to enhance the power of senior officers to manage the Police Service efficiently, while always managing it fairly. It is suggested that a procedure such as is described below will achieve this aim.

8.11 An officer of chief officer rank (but not the Chief Constable of the Force) should conduct any misconduct proceedings, assisted by 2 assessors of at least superintendent rank.

8.12 The officer subject to the proceedings, of which he or she would have been given notice, should receive in advance a written statement of the matters complained of, explaining the reasons for the hearing. The officer would be invited to inform management if the written statement was agreed, or alternatively to identify any matters not agreed. Further inquiries might then be necessitated. The aim would be to compile, if possible, an agreed statement of the relevant facts, for advance consideration by the presiding officer and the assessors. Failing that, these persons would be presented with a clear statement of the two sides of the case.

8.13 The presiding officer and the assessors would be required to decide then whether to hear witnesses or whether they were able to obtain a clear view of the matter from the papers. If a witness were called, the officer subject to the proceedings would be entitled to test the evidence given. The officer would then be invited to offer an explanation of any agreed statement of the relevant facts, or to give his or her own account of what happened, and to address the issue of misconduct. A request to be allowed to call one or more witnesses in support would normally be granted.

8.14 It would be the function of the hearing to allow the presiding officer, with the assistance of the assessors, to determine whether, on the totality of the matters thus brought before them, the alleged misconduct was established. That means that it would be for police management, upon whom the onus would rest, to establish at least that the conduct alleged against the officer probably occurred, and that it constituted misconduct. Legal representation would not be permitted but the assistance of an adviser as described in paragraph 4.5 would be permissible.

8.15 The Secretary of State considers that because fairness is to be the guiding principle of misconduct proceedings it is unnecessary to stipulate more precisely the standard of proof. The hearing should reflect the kind of enquiry any reasonable employer outside the police service would undertake when faced with an allegation of misconduct of a given degree of gravity against an employee entrusted with serious responsibilities, and hence one to whom his or her reputation for integrity and general propriety is a coveted asset. In general, the more serious the allegation and therefore the appropriate sanction, the more stringent would be the appropriate standard of proof.

Q11 Is there any reason why a misconduct hearing should be on a quasi-judicial model?

Q12 Is the approach to the level of evidence suggested in paragraph 8.15 appropriate for misconduct hearings?

- Q13 Do the proposed procedures for misconduct hearings meet the requirement for more efficient management?
- Q14 Are the proposed procedures fair to the officer concerned?
- Q15 Are there any other comments on the procedures broadly described, or any suggestions for a different type of procedure?

Cases Originating from a Complaint

8.16 The misconduct procedures outlined above will apply to misconduct cases arising from a complaint as much as to misconduct identified by management. Where the ICPC and police management disagree on the need for a misconduct hearing, it would seem desirable for the ICPC (as at present) to have the power to insist on a misconduct hearing although the present tribunal structure consisting of two members of the ICPC and the Chief Constable may not be the best arrangement.

- Q16. Who should hear a misconduct case if the ICPC and police management disagree on the need for a hearing? Who should oversee the presentation of the case?

Outcomes

8.17 The range of outcomes where misconduct has been established could well be different from those in current discipline proceedings. A full list of outcomes could be as follows:

- (a) Dismissal - effective immediately;
- (b) Requirement to resign - effective immediately;
- (c) Demotion - effective immediately;
- (d) Loss of increment - one or more, depending on nature and seriousness of misconduct;
- (e) Monetary penalty;

- (f) Bar on the officer performing certain duties for a period or permanently;
- (g) Warning - that repetition could result in dismissal.

It might be that the particular conduct under consideration was not so serious that one of the outcomes above was appropriate, but that a pattern of such behaviour would indicate a more serious problem. In this case it might be appropriate to take no immediate action, but rule that the conduct hearing should be taken into account in any consideration of any subsequent similar behaviour.

8.18 It would be open to the officer to appeal to the Chief Constable soon after the hearing (say within one week) and the appeal would be determined within a set period, say 30 days.

8.19 If the officer had been dismissed or required to resign a further avenue of appeal would be available to a special Appeals Tribunal (see paragraphs 4.6 and 4.7 above). As in unsatisfactory performance cases, the scope for the Force to decide whether or not to accept any recommendation as to reinstatement would depend upon the decision taken on the type of Tribunal and its powers.

Q17 Is the range of outcomes suggested appropriate?

Appeal

8.20 The current provision of a right of appeal to the Secretary of State against either or both the finding and the punishment in a disciplinary hearing seems an anomaly¹. Whatever is decided about the nature of the hearings themselves, there seems to be no justification for bringing in a Minister of the Crown to act as the final arbiter and it is proposed that this particular right should be abolished, substituting in its place the new avenue of appeal to an Appeals Tribunal identified in paragraphs 4.6 and 4.7.

Q18 Is there any reason why the Secretary of State should be involved in any way in police disciplinary proceedings?

9. OUTRIGHT DISMISSAL

9.1 The introduction of procedures to deal with unsatisfactory performance (including those to deal with misconduct) would provide chief officers with a flexible range of powers to deal with any failure of performance or conduct by police officers. But in other management situations those with the ultimate responsibility for a public service have the right to dismiss people immediately, without following any set procedure, in circumstances where they believe someone to have shown beyond doubt that they are not fit to remain in the relevant service. This right is subject only to the appropriate appeal procedures.

9.2 The Secretary of State believes that the Chief Constable should have a similar power for the occasional case in which an officer makes it clear by a single public action that his or her continuance in the service can only bring it into disrepute. It is therefore proposed that the RUC Chief Constable should have the power - to be exercised personally and not delegated - of outright dismissal, subject to appeal to an Appeals Tribunal. This would not only emphasise the Chief Constable's responsibility for the behaviour of his Force but would also enable instant action to be taken in the rare cases where this seems necessary for the good standing of the police. An outline of a possible procedure is set out at Appendix B.

Q19 Is it acceptable and reasonable for the Chief Constable to have a power of outright dismissal as suggested?

¹ As paragraph 2.3 notes this consultation paper does not discuss arrangements for officers of rank above chief superintendent. For such senior officers it is possible that it might be appropriate to involve the Secretary of State.

10. IMPLEMENTATION

10.1 If reforms along the lines of those set out in this paper were to be implemented, there should be only a limited requirement for primary legislation - the majority of the proposals impinge on the regulations embodied in secondary legislation. On the one hand the option exists of replacing these regulations with non-statutory guidance. This would allow management to respond flexibly to failures of performance and conduct and would remove from officers the shadow of rigid quasi-judicial procedures for what may have been a relatively minor mistake or misunderstanding. On the other hand, adequate protection of the police officer must be ensured, and this may be best assured by continuing to embody the procedures in secondary legislation. Views are invited on the following question:

Q20 To what extent should the description of misconduct (paragraphs 5.3, 5.4), and the new procedures for handling unsatisfactory performance and misconduct be embodied in secondary legislation?

11. CONCLUSION

11.1 The change from a system of personnel management identified negatively as "discipline" to one which sees its task as the improvement both of the service given by officers to the public and the service given to officers by management is a major one.

11.2 When changing from discipline to good management practices, the critical decision is not whether one individual proposal or the other is desirable, but whether the new approach as a whole is to be regarded as preferable to the old or not. Each part of the system would work effectively only if the underlying change is adopted in full and operated in the spirit in which it was designed.

11.3 The new approach should result in systems which better match the needs both of the police service and the public, without any significant impact on resources. It should seek to build on the strengths of the police service and the work which has already been done on quality of service and to achieve greater value for money.

11.4 The changes required would not take place overnight but their implementation would have significant effects. They would affect all officers at some stage in their career and involve changes not only in procedures but in attitudes. The Secretary of State recognises that the changes proposed must be supported by necessary changes elsewhere. Officers would need training in operating the new procedures; guidelines on their operation would have to be written, and seminars held to explain the rationale of this approach to staff management. In particular, the Police Staff Associations and those responsible for police training will be closely involved in the follow up to responses to this paper, to which the Secretary of State looks forward with keen anticipation.

Police Division
Northern Ireland Office
August 1993

1. RUC (DISCIPLINE AND DISCIPLINARY APPEALS) REGULATIONS 1988
(S.R. 1988 No. 10)
RUCR (PART-TIME) (DISCIPLINE AND DISCIPLINARY APPEALS) REGULATIONS
1988 (S.R. 1988 No. 8)

1. SUSPENSIONS

1.1 Who does it

The chief officer of the Force.

Chief Constable may delegate
the function to a Deputy
Chief Constable.

1.2 What power

"may suspend" a member of the Force
"whether or not the matter has been
investigated".

He does not have to await
proof.

1.3 Under what circumstances

"Where a report, allegation or
complaint is received" which
implies a disciplinary or
criminal offence.

1.4 Authority. Regulation 26 of RUC
(Discipline and Disciplinary Appeals)
Regulations 1988. Regulation 23 of PTR
equivalent

2. EFFECT ON PAY

2.1 With pay unless the officer is:

But without special allowances
other than rent, supplementary
rent and compensatory grant

- 2.1.1 in prison or custody
- 2.1.2 absent from duty and
whereabouts unknown.

2.2 Any non-payment paid if officer:

- (i) not charged;
- (ii) charges dismissed;
- (iii) punishment does not include
dismissal, requirement to
resign or reduction in rank.

2.3 Authority. Schedule 6, RUC Regulations
1984 (S.R. 1984 No. 62).

1. Applies also to RUCR (Full-Time)

3. PROCEDURE

- 3.1 The chief officer appoints an investigating officer (IO). An officer from **outside** the force can be appointed.

3.2 Personal explanation

The IO must tell the officer of the report, allegation or complaint and warn him in writing: "As soon as practicable".

- 3.2.1 that they do not have to say anything but can if they wish. Written or oral statement to IO or chief officer.

- 3.2.2 that if they do respond, any statement may be used in disciplinary proceedings.

- 3.3 **Authority.** Regulation 6 RUC (Discipline and Disciplinary Appeals) Regulations 1988. Regulation 5 of PTR equivalent.

4. CRIMINAL PROCEEDINGS

- 4.1 The IO reports to the chief officer.
- 4.2 The chief officer will deal with the report as he or she would with any other potential evidence of criminal behaviour ie
- 4.3 make a report to DPP, who will
- 4.4 consider prosecution.

5. DISCIPLINARY PROCEEDINGS

- 5.1 If there is not enough evidence to justify prosecution, the officers may still face disciplinary action in relation to how they have performed their duty eg charges of disobedience, neglect of duty, falsehood among others may apply, but not usually on the precise matter which would have formed the basis for the criminal charge.

- 5.2 If an officer has been found not guilty, he cannot be charged with a disciplinary offence which is basically the same (Article 22 of the Police (NI) Order 1987).
- 5.3 If officers have been convicted of an offence involving dishonesty, they would normally be charged with criminal conduct as a discipline offence. This may not be so in the case of minor traffic offences not related to duty. Details of disciplinary offences. Schedule 1, RUC (Discipline and Disciplinary Appeals) Regulations 1988. Schedule 1 of PTR equivalent.
- 5.4 Disciplinary charges are brought at chief officer's discretion. They can only be brought if the action is contrary to an article of the Discipline Code.
- 5.5 A copy of all statements made etc must be supplied to the officer. Reg 9 RUC (Discipline etc) Regulations 1988. Regulation 8 PTR equivalent.
- 5.6 If liable to dismissal or demotion, the officer must be offered the option of being legally represented (Reg 12 in RUC Regulations).
- 5.7 The officer must admit or deny the charge, decide on legal representation (if appropriate) and name any witnesses to be called (Reg 11 in RUC Regulations). Reg 10 in PTR equivalent.
- 5.8 The hearing will generally be before a disciplinary board constituted in accordance with Schedule 4 of RUC Regulations and Regulation 11 PTR equivalent. Where the ICPC have directed that charges be brought, hearing is by a tribunal of two ICPC members and the Chief Constable which decides by majority. Cases of which the Chief Constable has some prior involvement may be remitted for hearing or decision or both elsewhere.
- 5.9 Proof must be beyond reasonable doubt (Reg 20 (2)(b) of RUC Regulations, Reg 20 of PTR equivalent).

- 5.10 **The hearing cannot proceed in the officer's absence** if good reason for it has been given (RUC Reg 20, Reg 20 of PTR) equivalent.
- 5.11 **Punishment** can range from dismissal to a caution, including demotion, reduction in salary, and fines (RUC Reg 21, Reg 21 PTR equivalent).
- 5.12 **Appeal** is available to the Secretary of State in all cases (RUC Reg 49).
6. **COSTS**
- 6.1 There are no special powers under which the costs of a police officer's legal representation in criminal or disciplinary proceedings against him or her can be met from public funds unless the officer is of chief officer rank (ie above chief superintendent), to which special considerations apply.
- Anxiety over the protracted proceedings may be at the root of a medical state which doctors will certify prevents the officer's attendance.
- Officers dealt with by the Deputy Chief Constable have an additional right of appeal to the Chief Constable.
- The Police Federation usually meets legal costs for officers below the rank of superintendent fearing dismissal etc.

OUTRIGHT DISMISSAL

1. It is suggested that the Chief Constable should be given a power to dismiss without notice any officer whom he has reasonable cause to believe has been guilty of conduct so discreditable that continuance in the service would cast doubt on its standards.
2. Reasonable belief. While the Chief Constable should take care that he has reasonable grounds on which to base his belief as to the discreditable nature of the officer's actions, the matter is not required to be proved in accordance with the principles of criminal law. The Chief Constable might, for example, reasonably hesitate to act if an officer were accused of assault in confused circumstances in which more than one party was injured. If however, for example, other officers reported a colleague for striking a prisoner who confirmed the attack and there was no evidence to the contrary, the Chief Constable might reasonably conclude that the officer had brought discredit on the service and should leave it.
3. Discreditable conduct. The conduct referred to may be such as to form the basis for criminal, or management action. The essential misconduct element in it must be that it is regarded as so contrary to the standards of the police service as to preclude the officer from giving satisfactory service in the future or to impugn the good name of the Force if it fails to repudiate such conduct or both. Examples might include the police officer who refused to attend to prevent a suicide attempt because his or her duty did not commence for another quarter of an hour, or an officer who is caught in an act of burglary or theft within his or her place of work.

4. Timescale. Dismissal of this type should follow shortly on the first opportunity available to the Chief Constable to form a reasonable conclusion as to the nature of the officer's actions. It could not, for instance, be activated years later or if misconduct proceedings fail but would operate as an immediate but reasoned and considered response to an intolerable action.
5. Appeal. The decision would be taken by the Chief Constable personally and there would be no appeal, although it would be open to the dismissed officer to contest the decision via an Appeals Tribunal.